IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 40 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALLAMMIYA HUSENMIYA SAIYED

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 40 of 1998

MR YATIN SONI for Petitioners No. 1-2

MR KJ SHETH, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/02/2002

ORAL JUDGEMENT

1. This is a criminal revision application filed by the petitioners who were original accused before the learned Metropolitan Magistrate, Court No.10, in criminal case No.1757/97.

2. The two petitioners were chargesheeted in the

aforesaid Court for the offence punishable under Sections 326, 342 read with Section 114 of I.P.C. and they were sentenced by the said Court on 20.12.1997. The petitioners were sentenced to suffer R.I. for three years for the offence punishable under Section 326 read with Section 114 of I.P.C. They were directed to pay fine of Rs.5,000/- for the said offence. So far as offence punishable under Section 342 read with 114 I.P.C is concerned, the petitioners were convicted for the said offence and they were directed to suffer S.I. for one month. They were directed to pay fine of Rs.500/- and in default of payment of fine, they were required to undergo further S.I. of six months.

3. Feeling aggrieved by the said judgment and conviction orders of the Trial Court the petitioners preferred Criminal appeal being criminal appeal No.94/97 before the City Sessions Court, at Ahmedabad. The learned additional City Sessions Judge who heard the appeal was pleased to dismiss the same by judgment and order dated 19.12.1998.

4. Feeling aggrieved by the said judgment and order of the City Sessions Court, the petitioners have preferred this revision application before this Court. It has been contended by the petitioners that the two courts below have not recorded the findings legally and there is inherent infirmity and, therefore, the judgments and orders are illegal and deserve to be set aside. The petitioners have therefore prayed to set aside those judgments and orders.

5. On receipt of the revision application notice was issued at the first instance. Rule was issued thereafter. Mr.Sheth learned A.P.P. appears for the State in response to the service of rule. I have heard Mr.Soni learned advocate for the petitioners and Mr.Sheth learned A.P.P. for the State. I have also gone through the papers made available by them.

6. The learned advocate for the petitioners has heavily assailed the findings of the Courts below about the offence punishable under Section 326 IPC. The learned advocate for the petitioners has taken me through the oral evidence as well as medical evidence in support of the contentions that there was no grevious hurt suffered by the petitioner and, therefore, no offence punishable under Section 326 can be said to have been committed by the petitioners. On going though the oral evidence as well as the evidence of the medical officer, it transpires that the medical officer has given his

evidence before the Trial Court at Exh.5. There the Doctor has stated about the nature of injuries that injuries suffered by the injured Rafikbhai Kasambhai were something more than simple injuries and they should not be treated as grevious hurt in any case. It is further deposed by him that the injured would require a treatment of about three months. Even the evidence of the injured and other witnesses was also read by the learned advocate for the petitioners in support of his contentions that the injuries suffered by the petitioners were grevious in nature.

7. For the purpose of deciding the nature of injuries, it would be necessary to consider the provisions made in Section 320 of the Indian Penal Code. According to the provisions of Section 320 IPC the injury can be treated to be grevious provided that the requirements of the said Section are fulfilled. The said requirements can be reproduced for ready reference as follows :-

"320. Grevious hurt-The following kinds of hurt only are designated as "grievous"

First _ Emasculation.

Secondly - Premanent privation of the sight of either eye.

Thirdly - Permanent privation of the hearing of either ear.

Fourthly - Privation of any member or joint.

Fifthly - Destruction or permanent impairing of the powers of any member or joint.

Sixthly - Permanent disfiguration of the head or face.

Seventhly - Fracture or dislocation of a bone or tooth.

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or

unable to follow his ordinary pursuits.

8. Now according to the evidence on record, the injured witness had not suffered fracture and, therefore the injury could not be treated to be grevious from that angle. Then there is no permanent privation of the sight of the either eye. There is no emasculation. There is no permanent privation of the hearing of the either ear, since there is no injury on the ear. Than there is no privation of any member or joint. Than there is no destruction or permanent impairing of the powers of any member or joint. There is no permanent disfiguration of the head or face. There is no fracture or dislocation of a bone or tooth. Therefore the injuries found by the injured do not fall within the four corners of first seven requirements of Section 320 of IPC. So far as 8th requirement is concerned, there should be a hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain or unable to follow his ordinary pursuits. The evidence on record does not show that there was any danger to the life of the injured person and it is also not on record to show that the injuries suffered by the injured caused the sufferer to be, during the space of twenty days, in severe bodily pain or that he was unable to follow his ordinary pursuits during the said period of twenty days.

9. In that view of the matter, it is clear that the injuries in question do not fall within four corners of Section 320 IPC. Considering the evidence of the medical officer as well as of the injured, it is amply clear that the injured had not suffered grevious hurt and when grevious hurts were not proved to have been caused by the petitioners to the injured person then in that event the offence in question should not be treated to be one punishable under Section 326 IPC. In that view of the matter, the offence will have to be treated to be one falling under Section 324 IPC. So far as offence punishable under Section 326 IPC is concerned, it is punishable with imprisonment for life and, therefore it would require severe punishment. So far as offence punishable under Section 324 IPC is concerned, it is not an offence punishable with imprisonment for life but the law shows that the offence punishable under Section 324 IPC is punishable with imprisonment for three years or with fine or with both. This shows that the offence is such wherein even the Court is not obliged to inflict jail sentence on the accused persons. Sometimes in some case even imposition of fine may be treated to be sufficient. In some cases only imprisonment may be found

to be sufficient. In some case the Court may impose jail sentence as well as fine. In the present case we find that looking to the said offence committed by the petitioners this would not be a case wherein the Court should impose only fine on the petitioner.

10. It is to be seen that the petitioners had taken the injured in a room and had caused injuries by means of knife on his calf. The injuries were bleeding and, therefore, there was a pool of blood at the place where the offence was committed by the petitioners. The aforesaid aspect was supported by the evidence of other witnesses on record and, therefore, the learned advocate for the petitioners has found it proper not to challenge the conviction of the petitioners for the offence punishable under Section 324 IPC and, therefore, he has contended that since the petitioners have suffered imprisonment for a period of five months and three weeks it was submitted that the said sentence may be treated to be sufficient. Considering the fact that the petitioners have committed offence punishable under Section 324 IPC, it therefore becomes clear that the petitioners should be held guilty for the offence punishable under Section 324 IPC and not for the offence punishable under Section 326 IPC. Therefore, the jail sentence is required to be reduced. Having regard to the nature of the injuries sustained by the injured and having regard to the facts of the case and evidence on record the learned advocate for the petitioners has not pressed this revision application for the conviction for the offence punishable under Section 324 IPC. This also requires to be considered while reducing quantum of the punishment imposed upon the petitioners. In other words, the sentence awarded for the offence punishable under Section 326 IPC will naturally be required to be reduced when the petitioner are not being convicted for the offence punishable under Section 326 IPC, but they are convicted for the offence punishable under Section 324 IPC, looking to the provision for the maximum punishment provided for the two offences

For the foregoing reasons, the Revision Application is partly allowed. The petitioners' conviction for the offence punishable under Sections 326, I.P.C. is ordered to be converted into one for the offence punishable under Section 324 I.P.C. and, therefore, the petitioners are held to be guilty for the offence punishable under Section 324 I.P.C. and instead of sentencing the petitioners to suffer R.I. for 3 years it is directed that the petitioners shall suffer R.I. for the period already undergone. The order of payment

of fine of Rs.5,000/- directed by the Trial Court is not required to be disturbed. Therefore each petitioner shall pay fine of Rs.5,000/- for the offence punishable under Section 324 IPC and in case of default of payment of fine they shall undergo S.I. for 1 month. If the fine is recovered then the amount of Rs.6,000/- shall be paid to the injured - Rafikbhai Kasambhai resident of Block-1, Room No.10, Bapunagar, Ahmedabad. The order of conviction and sentence of the petitioners for the offence punishable under Section 342 read with Section 114 IPC recorded by the Trial Court and confirmed by the Sessions Court is confirmed. Rule is made absolute to the above extent. If fine is not paid within one month, the Trial Court will take necessary action in the matter. Sentence of both the offences shall be run concurrently. Bail bonds stand cancelled. Direct Service is permitted.

(D.P. Buch, J.)

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